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DECISION



D. A. Johnson
Cur. P. 12
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-189998

DATE: March 22, 1978

MATTER OF: Robert C. Keli, - Relocation Expenses

- DIGEST:**
1. Even though travel authorization did not authorize employee per diem and transportation for dependents in connection with his transfer, employee may be reimbursed for dependents' travel if such expenses are approved by appropriate official. If so approved, payment of per diem and transportation of two dependent who travel a year later would be proper.
 2. Employee stationed in Wyoming and transferred to Maine may not be reimbursed for real estate expenses incident to sale of residence in New Hampshire in which his family resided. Paragraphs 2-1.41 and 2-6.1 of FTR require that residence sold be situated at employee's old "official station," which is defined in para. 2-1.41 as residence or quarters from which employee commutes to and from work, with exception provided only where duty station is in remote area where adequate family housing is unavailable. See B-180748, October 3, 1974.
 3. Employee transferred from Wyoming to Maine in August 1975, whose family continued to reside at their former residence in New Hampshire until July 1976, claims temporary quarters subsistence expenses for quarters occupied with family from July 3, 1976, to August 1, 1976. Claim may not be allowed as para. 2-5.2d of FTR states that when family does not vacate residence at old duty station, occupancy of temporary quarters must commence within 30 days of employee's

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transfer. See B-180748, October 3, 1974. Employee may be entitled to temporary quarters subsistence expense in connection with his own earlier occupancy of temporary accommodations.

This matter involves a request for an advance decision by Mr. H. Larry Jordan an authorized certifying officer of the U.S. Department of Agriculture, as to whether Mr. Robert C. Kelly, an agency employee, may be reimbursed for temporary quarters subsistence expenses in the amount of \$1,004.05 for himself and his dependents in connection with his transfer from Casper, Wyoming, to Orono, Maine. The agency also asks whether it properly allowed Mr. Kelly reimbursement for per diem and transportation expenses for travel by three of his dependents in August of 1975, and whether it may instead reimburse him for travel by all five of his dependents in July of 1976. In addition the agency asks whether Mr. Kelly was properly entitled to reimbursement in the amount of \$3,335 in connection with the sale of his Hanover, New Hampshire, residence.

The record shows that by Travel Authorization dated August 4, 1975, Mr. Kelly was authorized mileage and per diem for himself incident to his transfer. In addition, Mr. Kelly was authorized reimbursement of temporary quarters subsistence expenses for himself and his dependents along with reimbursement for expenses incident to residence transactions.

On August 9, 1975, Mr. Kelly, accompanied by one of his dependent sons, departed Casper, Wyoming, by automobile and arrived on August 14, 1975, in Hanover, New Hampshire, where he owned a residence in which his wife and the other members of his immediate family resided. On August 24, 1975, Mr. Kelly, accompanied by his spouse and two of his four dependent children, traveled from Hanover to his new duty station in Orono, Maine. After a few days, Mr. Kelly's family members returned to their residence in Hanover where they continued to reside until the residence was sold on July 1, 1976. The family members then proceeded to Orono and Mr. Kelly claims temporary quarters for himself and his dependents for the period July 3 through August 1, 1976.

The agency has reimbursed Mr. Kelly for travel expenses for himself and the three dependents who accompanied him on August 24,

1975. The certifying officer questions whether that reimbursement was proper since the travel authorization did not authorize reimbursement for the travel expenses of his dependents. Mr. Kelly has been reimbursed per diem of \$24.75 incident to his son's travel from Casper to Hanover for the period from August 9, 1975, to August 14, 1975, and \$28 for travel on August 24, 1975, by his wife and two dependent children from Hanover to Orono for a total amount of \$52.75. In addition he was reimbursed mileage at the rate of \$.12 per mile for the distance traveled between Casper, Wyoming, and Orono, Maine.

Authority to pay the transportation expenses of an employee's immediate family incident to transfer derives from 5 U.S.C. 5724(a) and 5 U.S.C. 5724a(a)(1). The governing regulations at Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973), Part 2-2, provide for payment of mileage and per diem in connection with dependents' travel when authorized or approved in connection with a transfer. Under these authorities we have recognized that expenses of dependents' travel may be approved after the transfer and the travel involved has been accomplished. B-167451, September 2, 1969, and B-163107, January 30, 1968. Insofar as the travel voucher under which Mr. Kelly was reimbursed for his dependents' travel was approved by an official having authority to authorize or approve payment of such expenses, we have no objection to payment of the transportation and per diem expenses incurred by Mr. Kelly's wife and two children in accompanying him to Orono, Maine, in August of 1975.

We note, however, that there appears to be some discrepancy as to the mileage rate at which Mr. Kelly is to be reimbursed in connection with his and his dependents' travel in August of 1975. Notations on Mr. Kelly's voucher submitted November 25, 1975, indicate that he was reimbursed at the rate of \$.12 per mile for the entire distance traveled from Casper, Wyoming, to Orono, Maine. Paragraph 2-2.3 of the FTR as amended effective February 8, 1974, by Temporary Regulations A-9 and in effect at the date of the travel performed, authorizes payment of mileage in connection with permanent change-of-station travel at the following rates:

"b. Mileage rates prescribed. Payment of mileage and per diem allowances, when authorized or approved in connection with the transfer, shall be allowed as follows:

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	<u>Mileage rate</u> <u>(cents)</u>
"Occupants of automobile	
"Employee only, or one member of immediate family-----	8
"Employee and one member, or two members of immediate family-----	10
"Employee and two or more members, or three or more members of immediate family-----	12"

Since Mr. Kelly was accompanied only by one son while traveling from Casper to Hanover, his mileage for that distance should be reimbursed at the \$.10 rate authorized for an employee and one family member traveling by privately owned vehicle. For the remaining distance from Hanover to Orono, he may be reimbursed at the \$.12 rate authorized for an employee traveling by privately owned vehicle while accompanied by two or more family members inasmuch as he was accompanied by his wife and two children for that portion of the travel.

Further, with respect to dependents' travel, the certifying officer asks whether the original claim may be adjusted to show that the immediate family traveled on July 1, 1976, rather than on August 24, 1975. Although the record is not complete in this regard, we presume that the certifying officer has raised this question because all five of Mr. Kelly's dependents traveled to Orono, Maine, in July of 1976, whereas only his wife and two of his four children accompanied him in August of 1975. The certifying officer is apparently under the erroneous impression that transportation and per diem expenses for the two dependents who did not accompany Mr. Kelly in August of 1975 may be reimbursed only in connection with travel by the other family members.

Insofar as the transportation and per diem expenses of Mr. Kelly's dependents are approved, he may also be reimbursed for travel by his two dependents between Hanover, New Hampshire, and Orono, Maine. We assume that the family's travel to Orono in July of 1976 was by privately owned vehicle. In this connection it may be appropriate to approve the use of second car under FTR para. 2-2.3(e)(1)(c). With respect to subsequent approval of travel by more than one privately owned vehicle, see B-181355, July 29, 1975. Insofar as dependents' travel and use of a second

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vehicle is approved, Mr. Kelly would appear to be entitled to reimbursement for travel by his two dependents on the basis of the \$.10 mileage rate authorized by para. 2-2.3b of the FTR, quoted above, when two family members travel by privately owned vehicle incident to transfer of station. Matter of Albert R. Hinn, B-184813, June 24, 1976.

Concerning entitlement for reimbursement incident to the sale of a residence in connection with a transfer para. 2-6.1 of the FTR provides in pertinent part as follows:

"2-6.1. Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station, for purchase (including construction) of one dwelling at his new official station, or for the settlement of an unexpired lease involving his residence or a lot on which a mobile home used as his residence was located at the old official station; Provided, That:

* * * * *

"b. Location and type of residence. The residence or dwelling is the residence as described in 2-1.41, which may be a mobile home and/or the lot on which such mobile home is located or will be located."

Paragraph 2-1.41 of the FTR describes the residence in connection with which reimbursement of real estate and other expenses is authorized as follows:

"1. Official station or post of duty. The building or other place where the officer or employee regularly reports for duty. (For eligibility for change of station allowances, see 2-1.3 and 2-1.5b.) With respect to entitlement under these regulations relating to the residence and the household goods and

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personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. However, where the official station or post of duty is in a remote area where adequate family housing is not available within reasonable daily commuting distance, residence includes the dwelling where the family of the employee resides or will reside, but only if such residence reasonably relates to the official station as determined by an appropriate administrative official."

Mr. Kelly's New Hampshire residence was neither located at his old official station nor did he commute from that residence to his official duty station in Casper, Wyoming. Furthermore, the record does not reflect an unavailability of adequate family housing in Casper, Wyoming. Accordingly, there is no authority to reimburse Mr. Kelly for expenses incident to the selling of his residence in Hanover, New Hampshire. See Matter of Clarence G. Menke, B-180748, October 3, 1974. The amount of \$3,335 which the record shows Mr. Kelly was reimbursed incident to the sale of his New Hampshire residence should be collected.

Mr. Kelly reclaims the amount of \$1,004.05 which the agency has disallowed for temporary quarters subsistence expenses for himself and his dependents for quarters occupied in Orono, Maine, during the period July 3 to August 1, 1976. The FTR, para. 2-5.2e, provides as follows concerning entitlement to temporary quarters:

"e. Time to begin occupancy. The use of temporary quarters for subsistence expense purposes under these provisions may begin as soon as the employee's transfer has been authorized, and the written agreement required in 2-1.5a(1) has been signed. In order to be eligible for the temporary quarters allowance, the period of use of such quarters for which a claim for reimbursement is made must begin not later than 30 days from the date the employee reported

for duty at his new official station, or if not begun during this period, not later than 30 days from the date the family vacates the residence at the old official station, but not beyond the maximum time for beginning allowable travel and transportation."

The above-quoted regulation provides a period of limitation after reporting for duty at a new official station within which the use of temporary quarters must begin; and if not begun during this period, provides a maximum period after the family vacates the residence at the old official station within which the use of temporary quarters must begin. 54 Comp. Gen. 13 (1974). Although the record suggests that Mr. Kelly occupied temporary quarters for an extended period of time after he reported for duty at Orono, Maine, he has elected to claim temporary quarters subsistence expenses for the period after July 1976 that he occupied temporary accommodations with his family. Inasmuch as the residence vacated by Mr. Kelly's dependents was not a residence at the old official station as described in FTR, para. 2-1.41, quoted above, and inasmuch as the family did not otherwise vacate a residence at the old official station, there is no authority to reimburse him for temporary quarters subsistence expenses incurred beyond a period of time commencing 30 days after he reported for duty at his new official station. See Menke, supra.

The documentation submitted in support of Mr. Kelly's claim suggests that the quarters he occupied immediately after reporting for duty at Orono, Maine, may have been temporary in nature. In this regard, we note his statement to the effect that his wife accompanied him in August of 1975 for the purpose of locating temporary accommodations; the fact that he apparently rented larger quarters for the period from June through August of 1976 to accommodate his family; and his statement that their new residence was not available until August 14, 1976. Under these circumstances, Mr. Kelly may be entitled to temporary quarters subsistence expenses in connection with his own occupancy of temporary accommodations beginning within 30 days after he reported for duty. However, his claim for \$1,004.05 for temporary quarters subsistence expenses for the period from July 3 to August 1, 1976, was properly disallowed.

Mr. Kelly's reclaim voucher for temporary quarters subsistence expenses may not be allowed, the amount of \$1,335 which he was

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reimbursed incident to the sale of his New Hampshire residence should be collected, and his entitlement to expenses incident to transfer should otherwise be reassessed in accordance with the above.

R. K. Allen
Deputy Comptroller General
of the United States